HIGH COURT OF CHHATTISGARH AT BILASPUR

M. A. NO. 57 OF 2006

APPELLANT
Defendant

The Oriental Insurance Company Ltd.

Versus

RESPONDENT
Claimant

Shri Kuldeep Singh Chawla

POST FOR JUDGMENT ON 11.05.2007

Sd/-
Dhirendra Mishra
Judge

HIGH COURT OF CHHATTISGARH AT BILASPUR

M. A. NO. 57 OF 2006

APPELLANT Defendant	The Oriental Insurance Company Ltd., through its Divisional Manager, Divisional Office No.II. Chawla Complex, Devendra Nagar Road, Raipur, Tahsil & District-Raipur (C.G.)
Versus	
RESPONDENT Claimant	Shri Kuldeep Singh Chawla, aged about 48 years, S/o Shri T.S. Chawla, R/o Bus Stand Abhanpur, Post and Police Station-Abhanpur, District-Raipur (C.G.)

Present:

Mr. Sankalp Jaiswal, Advocate for the appellant.

None for the respondent.

JUDGMENT

(Delivered on 11 /05/2007)

Dhirendra Mishra, J

1) The appellant-Insurer has preferred this appeal under Section 173 of the Motor Vehicles Act, 1988 (hereinafter referred to as 'the Act') against the award dated 9th March, 2006 passed by the 11th Additional Motor Accident Claims Tribunal (FTC), Raipur in Claim Case No.24/05 whereby learned claims Tribunal has awarded a sum of Rs.38,000/- to the claimant/respondent towards the injuries sustained by him in the motor vehicle accident dated 28.8.2002 involving Motor Car No. C.G.-04-0860, owned by the him and driven by his son namely Navneet Singh rashly and negligently.

2) The only point involved for adjudication of this appeal is - whether a petition under Section 163(A) of the Act is maintainable at the instance of owner/insured?

3) Mr. Sankalp Jaiswal, learned counsel for the appellant submitted that the respondent/claimant himself was the owner of offending

vehicle, his son was driving the vehicle at the relevant time rashly and negligently, as a result of which accident occurred in which the respondent/owner sustained injuries. The vehicle was insured with the appellant/insurer vide policy of Ex.D/1 and no premium was obtained for covering risk of the owner.

4) Learned counsel for the appellant submits that admittedly the application has been preferred by the owner/insured of the vehicle, therefore, as per Section 147 (b) of the Act no such liability can be fastened upon the insurer for indemnifying the owner insured himself, as he cannot be termed as 3rd party because the jurisdiction of the tribunal was confined to a 3rd party claim only. Reliance is placed in the matter of **Oriental Insurance Company Co. Ltd. Vs. Smt. Jhuma Saha & ors** reported in **AIR 2007 SC 1054** & judgment of Division Bench of this Court in **M.A.[c] No.159/2007** between **Smt. Urmila Bai and others Vs. Policy Issuing Office.**

5) I have heard learned counsel for the appellant/insurer and perused the material available on record.

6) It is admitted position that the vehicle involved in question was insured by the appellant for 3rd party risk.

7) In the matter of Smt. Jhuma Saha (supra) it has been held that where insured owner of motor vehicle himself got injured due to his own negligent driving, insurer is not liable to pay compensation particularly when no additional premium has been paid in respect of entire risk of death or bodily injury of owner of vehicle. In Para 13 of this judgment it has been held that;

> "**13**. The additional premium was not paid in respect of the entire risk of death or bodily injury of the owner of the vehicle. If that be so, Section 147 (b) of the Motor Vehicles Act which in no uncertain terms covers a risk of a third party only would be attracted in the present case."

8) Further in the matter of Smt. Urmila Bai (supra) the Division Bench of this Court placing reliance upon the judgment of **Dhanraj Vs. New India Assurance Co. Ltd. and another** reported in **(2004) 8 SCC 553** has held that since the deceased was the owner of vehicle, so far as third party risk is concerned, his legal representatives are not entitled to claim compensation in accordance with the provisions of the Act, 1988.

9) In view of the aforesaid discussion the claim petition at the instance of the owner, who himself was traveling in the vehicle at the relevant time and met with an accident, against the insurer was not maintainable, particularly, when the policy did not cover his personal injuries for unlimited extent.

10) In the result, the appeal is allowed. The impugned award fastening the liability on the appellant insurance company is hereby set aside and it is held that application of the respondent herein, who himself was the owner and insured, was not maintainable under the Act.

Sd/-
Dhirendra Mishra
Judge

Khan/-